

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FREEDOM HOLDINGS, INC. d/b/a NORTH :
AMERICAN TRADING COMPANY, and :
INTERNATIONAL TOBACCO PARTNERS, LTD., :

Plaintiffs, :

-against- :

ANDREW M. CUOMO, in his official capacity as :
Attorney General of the State of New York, and :
ROBERT L. MEGNA, in his official capacity as :
Commissioner of Taxation and Finance of the State of :
New York, :

Defendants. :

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ALVIN K. HELLERSTEIN, U.S.D.J.:

ORDER

02 Civ. 2939 (AKH)

By letter dated January 16, 2009, Defendants describe a purported factual error in Footnote 15 of my Opinion and Order of January 12, 2009, which granted judgment dismissing the Complaint, and request that I change the footnote to reflect the contents of the letter. The footnote contains a proposition concerning proportionality of SPM payments which the Court of Appeals first stated in Freedom Holdings II, 363 F.3d 149, 153 (2d Cir. 2004), and which I repeated without further analysis in Freedom Holdings III, 447 F. Supp. 2d 230, 235-36 (S.D.N.Y. 2004). Defendants contend that the footnote wrongly portrays certain implications of the MSA's SPM payment formula, because it examines the central ratio of that formula without accounting for the effect of a component calculation of the Volume Adjustment by which the ratio is multiplied.

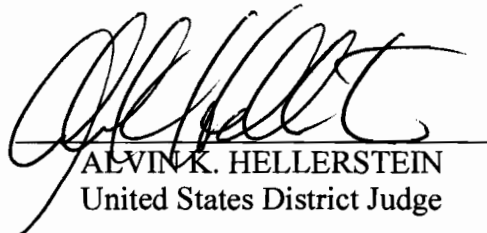
I decline to reconsider the footnote. If the proposition that I restate is in error, it has no bearing on the substance of my holdings or even on the subsequent portion of the

footnote, which disputes the conclusions drawn from the proposition by the Court of Appeals. See Freedom Holdings II, 363 F.3d at 153. Whether or not it is as Defendants describe, it has no antitrust or Commerce Clause consequences.

SO ORDERED.

Dated:

January 21, 2009
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge